

**In Re:**

*Digitek*

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*Richard Dowling*

*December 16, 2009*

*Confidential – Subject to Further Confidentiality Review*

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*GOLKOW TECHNOLOGIES, INC.*

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**EXHIBIT D**

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1

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

- - -

IN RE: DIGITEK® PRODUCTS : MDL NO.  
LIABILITY LITIGATION : 1968

(This document relates to all cases.)

- - -

CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

- - -

New York, New York  
Wednesday, December 16, 2009

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Videotaped Deposition of RICHARD  
DOWLING, held at Harris Beach PLLC, 100 Wall  
Street, 24th Floor, on the above date,  
beginning at 9:46 a.m., before Kimberly A.  
Overwise, a Certified Realtime Reporter and  
Notary Public.

- - -

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2

1 APPEARANCES:

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3

1 APPEARANCES: (Continued)

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21 ALSO PRESENT:

22

23 Catherine Smalfus, videographer  
24 Golkow Technologies, Inc.

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199

1 digoxin; isn't that right?

2 MR. ANDERTON: Objection.

3 You may answer.

4 THE WITNESS: We had lower  
5 punches and dies as indicated in the  
6 production batch record available to use  
7 for digoxin.

8 BY MR. THOMPSON:

9 Q Right. But the punches and dies  
10 were not reserved solely to use for digoxin,  
11 were they?

12 A The lowers and dies were used  
13 interchangeably.

14 Q Okay. So when you say  
15 "interchangeably," you're saying that the  
16 lowers and the dies were used for digoxin and  
17 for other products as well; isn't that right?

18 A Yes, they could be used for other  
19 products.

20 Q And what other products were they  
21 used for?

22 A That I don't recall. They would be  
23 products with the same die characteristic or  
24 size or the same punch or tablet

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201

1           press. Each time Digitek is  
2           manufactured, the Stokes BB2 45 station  
3           press is customized using very unique  
4           'tooling' - punches and dies - designed  
5           solely and used exclusively for the  
6           purpose of manufacturing Digitek on that  
7           tablet press."

8       BY MR. THOMPSON:

9           Q     Okay. Now, if I look at the e-mail  
10          and I remember our testimony, this paragraph  
11          that's in your affidavit is not quite correct,  
12          is it? I mean, didn't you just testify that  
13          as of December 18, 2007, that you used the  
14          punches and dies interchangeably to make  
15          products other than Digitek?

16                   MR. ANDERTON: Objection;  
17          mischaracterizes his testimony.

18                   You may answer.

19                   THE WITNESS: No. This  
20          statement is correct. We did use unique  
21          tooling.

22       BY MR. THOMPSON:

23           Q     You used punches and dies designed  
24          solely and used exclusively for the purpose of

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202

1 manufacturing Digitek; you see what you said?

2 A Yes.

3 Q You used the punches and dies as of  
4 December 18, 2007, to make tablets other than  
5 Digitek; isn't that right?

6 MR. ANDERTON: Objection;  
7 mischaracterizes his testimony.

8 THE WITNESS: Lowers and dies,  
9 yes.

10 BY MR. THOMPSON:

11 Q Well, now, the punches are the --  
12 okay. When you drafted this affidavit on 22  
13 June 2009, did you include in your original  
14 affidavit the fact that the punches and dies  
15 were used to make multiple products?

16 MR. ANDERTON: Objection;  
17 mischaracterizes the document.

18 THE WITNESS: I'm not sure what  
19 you mean by my original affidavit. This  
20 is the only --

21 BY MR. THOMPSON:

22 Q I'm saying that the draft -- did you  
23 ever have included in this affidavit the fact  
24 that the punches and dies were used for

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204

1       make multiple products?

2                       MR. ANDERTON: And, again, I  
3       object on several bases. The first is  
4       that question to the extent it  
5       characterizes Exhibit 97 mischaracterizes  
6       the information in Exhibit 97 and the  
7       witness' testimony.

8                       And I also instruct you with  
9       respect to his question about drafts of  
10      the affidavit to answer the question only  
11      to the extent you can do so without  
12      revealing privileged communication.

13      BY MR. THOMPSON:

14              Q     Let's start over again. Let's make  
15      sure we understand each other. Let's go to  
16      the e-mail of December 18, 2007, and we'll  
17      work our way back through that one more time.

18                      As of December 18, 2007, the punches  
19      and dies that were utilized for the making of  
20      Digitek were utilized in making multiple  
21      products; is that not correct?

22                      MR. ANDERTON: Objection;  
23      again, mischaracterizes the document.

24                      You may answer.



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205

1 THE WITNESS: The lower punches  
2 and dies were used for other products,  
3 yes.

4 BY MR. THOMPSON:

5 Q On June 22, 2009, did you not say:  
6 "Each time Digitek is manufactured, the Stokes  
7 BB2 45 station press is customized using very  
8 unique 'tooling' - punches and dies - designed  
9 solely and used exclusively for the purpose of  
10 manufacturing Digitek on that tablet press"?  
11 Isn't that what your affidavit says?

12 A Yes, that's what it says.

13 Q And, in fact, the punches and dies  
14 that were used to make Digitek were used to  
15 make multiple products; isn't that right?

16 MR. ANDERTON: Objection.

17 You may answer.

18 THE WITNESS: I need to define  
19 here what I meant by "unique tooling."  
20 That punch was a specific -- had a  
21 specific description. It was in a  
22 container labeled with a specific number  
23 that was referenced in the batch record,  
24 the lower punch. We would pull that

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206

1 particular container to set this press  
2 up. The same can be said for the die.  
3 And they were unique because I defined  
4 unique as what was required in that  
5 Digitek batch record.

6 BY MR. THOMPSON:

7 Q Here's what you said in this e-mail:  
8 "In the long run, the lower punches and dies  
9 will last longer if they are dedicated and not  
10 used for multiple products, and we won't have  
11 to delay set-ups because the lowers or dies  
12 needed are in use and not available."

13 That's what you said on December 18,  
14 2007, in your e-mail to Mr. Patel. Now, the  
15 fact is that you wrote Paragraph 14 telling  
16 the Court under oath that the punch and the  
17 die was unique and used solely to produce  
18 Digitek.

19 MR. ANDERTON: I object --

20 BY MR. THOMPSON:

21 Q Did you not?

22 MR. ANDERTON: Fred, I object  
23 to your tone with the witness and the  
24 fact that you're badgering him. I also

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207

1           object to the fact that you interrupted  
2           his explanation. He was trying to give  
3           you testimony about what the term  
4           "tooling" in the affidavit meant. Now,  
5           if you'd let him explain his definition  
6           of tooling as he started to do --

7                       MR. THOMPSON: You can  
8           certainly redirect him because I think  
9           you probably will want to, but I have a  
10          right to conduct my examination and I  
11          intend to.

12                     MR. ANDERTON: Well, you're  
13          conducting yourself a bit  
14          unprofessionally toward the witness when  
15          you interrupted his answer.

16       BY MR. THOMPSON:

17               Q     Go ahead and finish your answer.

18               A     Again, my description of unique  
19          tooling here is tooling that is designated in  
20          the batch record for Digitek, either strength,  
21          with a numbered designation of a container  
22          which contains that tooling for both the upper  
23          punch, lower punch, and the dies, and  
24          instructs the operator to pull that tooling to

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208

1 set that tablet press for Digitek. And he  
2 must use -- and my meaning of unique is he  
3 must use those punches designated in that  
4 batch record to set that press for digoxin.

5 Q And that punch and that die that you  
6 are saying are unique are, in fact, used for  
7 multiple products?

8 MR. ANDERTON: Objection.

9 BY MR. THOMPSON:

10 Q Isn't that right?

11 MR. ANDERTON: Objection;  
12 mischaracterizes his testimony.

13 THE WITNESS: I'm saying that  
14 they use the tooling designated in that  
15 batch record and had to assure they were  
16 pulling the right descriptive containers  
17 of tooling to set that press for Digitek  
18 is my meaning here.

19 BY MR. THOMPSON:

20 Q If there was another product that  
21 used the same punch and the same die, you  
22 would say that that other product has a unique  
23 design because its batch record would call for  
24 the same punch and the same die, I mean; isn't

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328

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CERTIFICATE

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I HEREBY CERTIFY that the  
witness was duly sworn by me and that the  
deposition is a true record of the testimony  
given by the witness.

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It was requested before  
completion of the deposition that the witness,  
RICHARD DOWLING, have the opportunity to read  
and sign the deposition transcript.



KIMBERLY A. OVERWISE  
Certified Realtime Reporter  
Notary Public  
Dated: January 4, 2010

(The foregoing certification of  
this transcript does not apply to any  
reproduction of the same by any means, unless  
under the direct control and/or supervision of  
the certifying reporter.)

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329

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over  
4 carefully and make any necessary corrections.  
5 You should state the reason in the appropriate  
6 space on the errata sheet for any corrections  
7 that are made.

8 After doing so, please sign the  
9 errata sheet and date it.

10 You are signing same subject to the  
11 changes you have noted on the errata sheet,  
12 which will be attached to your deposition.

13 It is imperative that you return the  
14 original errata sheet to the deposing attorney  
15 within thirty (30) days of receipt of the  
16 deposition transcript by you. If you fail to  
17 do so, the deposition transcript may be deemed  
18 to be accurate and may be used in court.

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